



# *COMMONWEALTH of VIRGINIA*

## *DEPARTMENT OF ENVIRONMENTAL QUALITY*

### VALLEY REGIONAL OFFICE

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Secretary of Natural Resources

Robert G. Burnley  
Director

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Regional Director

## **STATE WATER CONTROL BOARD ENFORCEMENT ACTION A SPECIAL ORDER BY CONSENT ISSUED TO:**

### **Nelson County Service Authority**

Sewage Treatment Plants located at Wintergreen Mountain and  
Henderson's Store, located in Nelson County, Virginia, and  
operated by the Nelson County Service Authority

### **SECTION A: Purpose**

This is a Special Order by consent issued under the authority of Va. Code §§ 62.1-44.15 (8a) and 8(d) between the State Water Control Board and the Nelson County Service Authority (NCSA) to resolve certain violations of the State Water Control Law occurring at sewage treatment plants at Wintergreen Mountain and Henderson's Store.

### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizen's board of the Commonwealth of Virginia as described in Code §§ 10.1-1184 and 62.1-44.7.
2. "Code" means the Code of Virginia (1950), as amended.

3. "NCSA" or "Nelson County" means the Nelson County (Virginia) Service Authority.
4. "VRO" or "Regional Office" means the Valley Regional Office of the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code § 10.1-1183.
5. "Wintergreen" means the Wintergreen Mountain sewage treatment plant (STP), VPDES Permit No. VA0031011, located at 143 Headwaters Lane in Nelson County, Virginia, and operated by the NCSA.
6. "Henderson's Store" means the Henderson's Store STP, VPDES Permit No. VA0087505, located in Nelson County, Virginia, and operated by the NCSA.
7. "Director" means the Director of the Department of Environmental Quality.
8. "Order" means this document, also known as a Consent Special Order.
9. "DEQ" means the Virginia Department of Environmental Quality.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. On March 2, 2004, DEQ issued a Warning Letter (WL) to the NCSA citing the failure of its Wintergreen STP facility to participate in a Quick Response Proficiency Test involving the parameters pH, TRC, BOD, and TSS due to the facility's failure to participate in the Discharge Monitoring Report Quality Assurance Study 23 (DMRQA). This data was due to be submitted to EPA by February 17, 2004. Participation in the DMRQA study is necessary to determine compliance with State Water Control law and regulations as well as parts II.A.1 and II.A.2 of the facility's VPDES Permit. On June 15, 2004, DEQ issued a Notice of Violation (NOV) to NCSA based upon these violations at Wintergreen.
2. The Wintergreen NOV also cited a violation for NCSA's failure to submit a Sludge Annual Report, which was due to be submitted to DEQ by February 19, 2003. Submission of the Report is required pursuant to Wintergreen's VPDES Permit. A report deemed inadequate and incomplete was received by DEQ on April 23, 2004. Subsequently, NCSA submitted a completed Sludge Report on June 28, 2004.
3. On June 15, 2004, DEQ also issued an NOV to the NCSA citing the failure of its Henderson's Store STP facility to participate in a Quick Response Proficiency Test involving the parameters pH, TRC, BOD, and TSS due to that facility's failure to participate in the DMRQA study. This data

was also due to be submitted to the EPA by February 17, 2004.

4. Wintergreen and Henderson's Store, by virtue of Part II.D. of their respective VPDES Permits, are required to submit any information requested by DEQ in order to determine compliance with the facilities' respective VPDES Permits. Clean Water Act section 308(a) makes participation in the DMRQA program, including proper analyses, reporting, and record retention, a mandatory requirement, and participation in the DMRQA study is necessary for DEQ to determine compliance with State Water Control law and regulations as well as Parts II.A.1 and II.A.2 of the facilities' VPDES Permits.
5. Part II.A.1. of Wintergreen's and Henderson's Store's respective VPDES Permits requires that samples and measurements taken for the purpose of monitoring shall be representative of the sampled activity. Part II.A.2. of Wintergreen's and Henderson's Store's respective VPDES Permits requires that monitoring results must be conducted according to test procedures approved under 40 CFR Part 136 (2000) or alternative EPA approved methods.
6. The October and November 2003 and May 2004 DMRs (discharge monitoring reports) for Wintergreen also indicated violations of recoverable copper permit effluent limits. The October 2003 DMR also indicates violations of recoverable zinc permit effluent limits. The cause of the effluent violations has been addressed and the violations are not anticipated to reoccur.
7. 9 VAC 25-31-50(A) prohibits discharge except in accordance with all VPDES Permit conditions.
8. Mr. Timothy Castillo, Executive Director of the NCSA, met with DEQ officials on June 28, 2004 to discuss the allegations and was informed that the NCSA would be asked to enter into an Order (this document) with DEQ, which would include the payment of civil charges.
9. The violations cited in the June 15, 2004 NOVs for Wintergreen and Henderson's Store facilities have been consolidated into a single Order due to the similarity of the violations and the fact that both facilities are operated by the same entity.

#### **SECTION D: Agreement and Order**

Accordingly, the Board, by virtue of the authority granted it in Va. Code §§ 62.1-44.15 (8a) and (8d), orders the NCSA and the NCSA agrees:

1. To pay a Civil Charge of \$2,500.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order; and

2. To submit completed DMRQA studies for Wintergreen, by February 17, 2005, and for Henderson's Store, extended by mutual agreement to September 2, 2005, to the proper federal authority, with verification to DEQ.
- The payment must be made by check, certified check, money order, or cashier's check payable to "Treasurer of the Commonwealth of Virginia" and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, Virginia 23240

The NCSA shall also include its Federal Identification Number with each payment and shall note on the payment that it is being made pursuant to this Order.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of the NCSA, for good cause shown by the NCSA, or on its own motion after notice and opportunity to be heard.
2. This Order addresses only those violations specifically identified herein. This Order shall not preclude the Board or Director from taking any action authorized by law, including, but not limited to: (1) taking any action regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts.
3. For purposes of this Order and subsequent actions with respect to this Order, the NCSA admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. The NCSA consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.

5. The NCSA declares it has received fair and due process under the Virginia Administrative Process Act, Code §§ 2.2-4000 *et seq.*, and the State Water Control Law, and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation and to judicial review of  
  
any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by the NCSA to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall act to waive or bar the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. The NCSA shall be responsible for failing to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. The NCSA must show that such circumstances resulting in noncompliance were beyond its control and not due to a lack of good faith or diligence on its part. The NCSA shall notify the Director of the Regional Office in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:
  - a. The reasons for the delay or noncompliance;
  - b. The projected duration of such delay or noncompliance;
  - c. The measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. The timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Director of the Regional Office in writing within 10 days of learning of any condition listed above, which the NCSA intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of inability to comply with

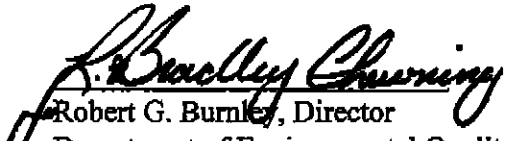
a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and the NCSA. Notwithstanding the foregoing, the NCSA agrees to be bound by any compliance date, which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. The NCSA petitions the Regional Director to terminate the Order after it has completed all requirements of the Order. The Director's determination that the NCSA has satisfied all the requirements of the Order is a "case decision" within the meaning of the Virginia Administrative Process Act; or
  - b. The Director or the Board may terminate this Order in his or its whole discretion upon 30 days written notice to the NCSA.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve the NCSA from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By its signature below, the NCSA voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of 13 July, 2005.

  
Robert G. Burnley, Director  
Department of Environmental Quality

The terms and conditions of the Order are voluntarily accepted by the NCSA:

Date: 10/21/04

By: Thomas M. Smith

Title: Executive Director

Commonwealth of Virginia, City/County of Nelson

The foregoing instrument was acknowledged before me this 21 day of October, 2004, by  
Timothy Castillo, who is Executive Director of the NCSA, on behalf of the NCSA.  
(name) (title)

2/28/2007

Date my commission  
expires

  
Notary Public